

DRAFT (2/3/05)

**California Public Employees' Retirement System**  
**PROTOCOL FOR DISCLOSURE AND MANAGEMENT**  
**OF CONFLICTS OF INTEREST OF CONSULTANTS**  
**(Effective \_\_\_\_\_, 2005)**

*This Protocol shall be effective immediately upon adoption, and supersedes all previous policies and protocols on this subject. However, this Protocol does not supersede and is meant to supplement any applicable provisions of state or federal law, including the Political Reform Act (Cal. Gov. Code sec. 87200 et seq.) and Government Code sections 20152.5 and 20153.*

**I. STRATEGIC OBJECTIVES AND PURPOSE**

The Board of Administration of the California Public Employees' Retirement System (CalPERS) has a constitutional duty to administer the System in accordance with its fiduciary responsibility to CalPERS' participants and beneficiaries. In administering its investment programs, CalPERS has determined it is appropriate to retain Consultants to facilitate the implementation of its investment programs. These Consultants provide CalPERS with technical expertise and advice in specialized areas. In addition to serving CalPERS, CalPERS' Consultants may have economic and/or personal interests that may not be fully aligned with CalPERS' interests. The purposes of this Protocol are (1) to assure that the information and advice CalPERS receives from its Consultants is impartial; and (2) to outline a system whereby actual and potential conflicts are disclosed to CalPERS and managed effectively. The intended effect of this Protocol is to:

- articulate clear disclosure obligations on the part of CalPERS' consultants; and
- set forth a methodology for CalPERS to evaluate actual and potential conflicts.

**II. DEFINITIONS**

The following definitions apply to terms as used in this Protocol:

- A. "Conflict of Interest" or "Conflict" includes those circumstances that create or have the potential to create an actual or reasonably perceived conflict between the Consultant's or any Key Personnel's duty (consistent with fiduciary standards of care) to provide investment advice that is aligned solely with the best interests of

CalPERS' plan participants and beneficiaries. A Conflict exists when a Consultant or any Key Personnel or a close relative, domestic partner or other significant personal or business relationship of the Consultant or Key Personnel knows or has reason to know that he or she has a financial or other interest that is likely to bias his or her advice or evaluation of a transaction.

The following examples illustrate situations that are considered Conflicts. This is not intended to be an exclusive list:

- The Consultant has an existing or reasonably expected financial relationship with a placement agent who also serves as a placement agent for an investment opportunity that the Consultant knows or has reason to know is under consideration by the CalPERS Investment Office.
  - The Consultant receives compensation or indirect financial gain, or has solicited business within the year prior to the particular assignment, from a person or entity that the Consultant knows or has reason to know that the CalPERS Investment Office is actively considering or currently doing business with.
  - The Consultant recommends its own proprietary products and services, including, e.g., indices and benchmarks, screening tools, or investment related software, even if there is no direct financial gain to Consultant from CalPERS.
  - The Consultant enters into a business arrangement that is competitive with CalPERS' interests in a specific assignment or transaction under consideration by the Investment Office.
- B. "Consultant" refers to individuals or firms, including Key Personnel, who are contractually retained or have been appointed to a pool by CalPERS to provide investment advice to CalPERS but who do not exercise investment discretion.
- C. "Key Personnel" refers to those persons identified by Consultant who will exercise a significant role in providing to CalPERS the services required under an assignment or contract.
- D. "Staff" refers to CalPERS Investment Office staff.

### **III. DISCLOSURE RESPONSIBILITIES OF CONSULTANTS**

- A. In its response to a Request for Proposal ("RFP"), Consultant shall generally identify in writing the circumstances and nature of Conflicts that may arise if it were selected to provide to CalPERS the services set forth in the RFP's scope of work.

- B. In addition, at the time of a specific assignment Consultant shall generally identify in writing to CalPERS Staff identified in the contract the circumstances and nature of all Conflicts pertinent to the specific assignment, recommendation, advice or other service. Consultant shall explain whether the Conflict is manageable or unmanageable. If the Conflict is manageable, the Consultant shall explain the steps or measures the Consultant intends to take to avoid the Conflict or manage the Conflict.

The disclosure required under this paragraph must be made prior to the time Consultant provides the services that give rise to the Conflict.

- C. Once a Conflict has been disclosed, the Consultant will promptly update CalPERS in writing of any changes in circumstances.
- D. In following this Protocol, Consultants are to consider the spirit as well as the literal expression of this policy, by taking ongoing responsibility for scrutinizing their activities and transactions for Conflicts and making appropriate disclosures. In cases where the Consultant is unsure whether a Conflict actually exists, the Conflict should be disclosed.

#### **IV. PROTOCOL FOLLOWING DISCLOSURES**

- A. Staff shall review all Conflict information presented by Consultants and may request additional information, if warranted. If upon review of the information provided, Staff desires additional information, the Consultant will promptly provide the additional information requested.
- B. Staff and, if requested by Staff, the CalPERS Legal Office, will analyze whether the Conflict is manageable and, if so, what steps or measures may be necessary to avoid or manage the Conflict. In addition, Staff will analyze on a case-by-case basis whether the Conflict is of a level of severity (either by itself or in combination with other Conflicts) which warrants consideration and action by the Investment Committee. Otherwise, Staff will instruct the Consultant of any additional action it deems necessary or appropriate to managing the Conflict. In all instances, Staff shall document their conclusion as to whether the Conflict is manageable.
- C. Where a pool of Consultants is available, CalPERS shall select the Consultant without a Conflict in conjunction with the assignment over an equally qualified Consultant with a Conflict. CalPERS may select a Consultant with a Conflict for an assignment if it determines that that Consultant can provide superior services or, is the only Consultant that can provide the services at a reasonable cost.

**V. PROACTIVE RESPONSIBILITIES OF STAFF**

- A. Whenever appropriate, and at a minimum once per year, staff will review with Consultants all Conflicts, to discuss their on-going and cumulative effect.
- B. Staff shall annually or, as needed, provide to the Investment Committee a summary of the types of Conflicts disclosed by the Consultants in the prior year and the actions taken by Staff in response to the various Conflicts.
- C. This Protocol shall be incorporated and included as an attachment to all RFPs and contracts with Consultants.